

(1) At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned by Persons unrelated to management. To satisfy this requirement, such Persons must not be your Associates (except for their status as your shareholders or limited partners) and must not Control, be Controlled by, or be under Common Control with any of your Associates. You must have as investors at least three such Persons who are not Affiliates of one another and whose investments are significant in both dollar and percentage terms, as determined by SBA. As an alternative, you may substitute one investor who is an acceptable Institutional Investor for the three investors who are otherwise required. For purposes of this paragraph (a)(1), the following Institutional Investors are acceptable:

- (i) Entities regulated by state or Federal authorities satisfactory to SBA;
- (ii) Public or private employee pension funds;
- (iii) Trusts, foundations, or endowments which are exempt from Federal income taxation; or
- (iv) Other Institutional Investors satisfactory to SBA.

(2) Your common stock or limited partnership interests are publicly traded.

(b) *Requirement two.* Your shareholders or limited partners may not delegate their voting rights to any other Person without prior SBA approval. This restriction does not apply to:

- (1) Publicly traded Licensees.
- (2) Proxies given to vote at single specified meetings.

(3) Delegations of voting rights by your investors to their investment advisors, provided such advisors are not your Associates (except for their status as your shareholder or partner).

(c) *Diversity based on Licensee's parent company.* If you do not have diversity as defined in paragraphs (a) and (b) of this section, SBA in its sole discretion may accept diversity achieved on the same basis through your parent company as a substitute. As used in this paragraph (c), "parent company" means an entity that directly or indirectly has an interest of more than 50 percent of your Regulatory Capital.

(d) *Requirement to maintain diversity after licensing.* If you were required to have diversity between management and ownership at the time you were licensed, you must maintain such diversity while you have outstanding Leverage or Earmarked Assets, unless SBA approves otherwise. If, at any time, you no longer satisfy the diversity criteria in paragraph (a) or (b) of this section, you must:

- (1) Notify SBA within 10 days; and
- (2) Re-establish diversity within six months.

(e) *Exception to diversity rule.* This § 107.150 does not apply if you are not licensed to issue participating securities and:

- (1) You received your license before November 28, 1995; or
- (2) SBA received your license application before November 28, 1995 and, as of such date, you had raised the funds needed to begin operations as contemplated in your business plan.

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§ 107.160 Special rules for Licensees formed as limited partnerships.

A limited partnership organized under State law solely for the purpose of performing the functions and conducting the activities contemplated under the Act may apply for a license under section 301(c) or section 301 (d) of the Act ("Partnership Licensee").

(a) *Number of Licensee's General Partners.* If you are a Partnership Licensee, you must have as your general partner(s) at least two individuals, or at least one corporation, partnership, or limited liability company (LLC), or any combination of individuals, corporations, partnerships, or LLCs.

(b) *Entity General Partner of Licensee.* A general partner which is a corporation, limited liability company or partnership (an "Entity General Partner") shall be organized under state law solely for the purpose of serving as the general partner of one or more Licensees.

(1) SBA must approve any person who will serve as an officer, director, manager, or general partner of the Entity General Partner. This provision must be stated in an Entity General Partner's Certificate of Incorporation,

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member agreement, Limited Partnership Agreement or other similar governing instrument which must, in each case, accompany the license application.

(2) An Entity General Partner is subject to the same examination and reporting requirements as a Licensee under section 310(b) of the Act. The restrictions and obligations imposed upon a Licensee by §§107.1800 through 107.1820, and 107.30, 107.410 through 107.450, 107.470, 107.475, 107.500, 107.510, 107.585, 107.600, 107.680, 107.690 through 107.692, 107.865, and 107.1910 apply also to an Entity General Partner of a Licensee.

(3) The general partner(s) of your Entity General Partner(s) will be considered your general partner.

(4) If your Entity General Partner is a limited partnership, its limited partners may be considered your Control Person(s) if they meet the definition for Control Person in §107.50.

(5) If your Entity General Partner is a limited partnership, it is subject to paragraph (a) of this section.

(c) *Other requirements for Partnership Licensees.* If you are a Partnership Licensee:

(1) You must have a minimum duration of ten years or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due SBA, its agent, or Trustee have been paid, the Partnership Licensee may be terminated by a vote of your partners. (For purposes of this provision SBA is not considered a partner.);

(2) None of your general partner(s) may be removed or replaced by your limited partners without prior written approval of SBA;

(3) Any transferee of, or successor in interest to, your general partner shall have only the rights and liabilities of a limited partner pending SBA's written approval of such transfer or succession; and

(4) You must incorporate all the provisions in this paragraph (c) in your Limited Partnership Agreement.

(d) *Obligations of a Control Person.* All Control Persons are bound by the disciplinary provisions of sections 313 and 314 of the Act and by the conflict-of-in-

terest rules under section 312 of the Act. The term Licensee, as used in §§107.30, 107.460, and 107.680 includes all of the Licensee's Control Persons. The term Licensee as used in §107.670 includes only the Licensee's general partner(s). The conditions specified in §§107.1800 through 107.1820 and §107.1910 apply to all general partners.

(e) *Liability of general partner for partnership debts to SBA.* Subject to section 314 of the Act, your general partner is not liable solely by reason of its status as a general partner for repayment of any Leverage or debts you owe to SBA unless SBA, in the exercise of reasonable investment prudence, and with regard to your financial soundness, determines otherwise prior to the purchase or guaranty of your Leverage.

(f) *Reorganization of Licensee.* A corporate Licensee wishing to reorganize as a Partnership Licensee, or a Partnership Licensee wishing to reorganize as a Corporate Licensee, may apply to SBA for approval under §107.470.

(g) *Special Leverage requirement.* Before your first issuance of Leverage, you must furnish SBA with evidence that you qualify as a partnership for tax purposes, either by a ruling from the Internal Revenue Service, or by an opinion of counsel.

CAPITALIZING AN SBIC

§107.200 Adequate capital for Licensees.

You must meet the requirements of this §107.200 to qualify for a license, to continue as a Licensee, and to receive Leverage.

(a) You must have enough Regulatory Capital to provide reasonable assurance that:

(1) You will operate soundly and profitably over the long term; and

(2) You will be able to operate actively in accordance with your Articles and within the context of your business plan, as approved by SBA.

(b) In SBA's sole discretion, you must be economically viable, taking into consideration actual and anticipated income and losses on your Loans and Investments, and the experience and qualifications of your owners and managers.